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Supreme Court of the United States.

OCTOBER TERM, 1941.

No. 229.

ELIZABETH WRIGHT AND CHARLES C. WRIGHT, PETITIONERS,

VS.

GUSTA LOGAN, HARRIET LOGAN SAWYER AND EXIA LOGAN REESE, RESPONDENTS.

APPLICATION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF OF PETITIONERS.

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This reply brief will follow the order of the brief in opposition filed by the respondents.

All emphasis is supplied unless stated otherwise.

Reply to Respondents' "Statement of the Case."

(Pages 1 to 5 of their Brief in Opposition.)

Petitioners' Right of Redemption by Special Agreement.

Thirty times in the twenty-two pages of Respondents' brief the statement is made that the petitioners' period of redemption had expired before the bankruptcy jurisdiction was invoked. The "period of redemption" thus referred to is the Illinois statutory period of redemption following sale in foreclosure which is twelve months for the mortgagor and three months additional for his creditors, or fifteen months in all. During this period the purchaser holds a certificate of purchase which may be exchanged for a deed following expiration of the statutory period.

Petitioners have a **right of redemption by special agreement** with the mortgagor, W. S. Logan, which was entered into after the foreclosure sale, while he held the certificate of purchase. The existence of this **right of redemption by special agreement** was determined by the Appellate Court of Illinois in *Wright* v. *Logan*, 288 Ill. App. 481. From this decision, no review was ever sought and it is the law of this case. It held that the petitioners' **right of redemption by special agreement** arose in 1933 before the twelve months statutory period expired and still existed at the date of the decision in 1937, nearly four years after the foreclosure and more than two years after the farmer debtor jurisdiction of the bankruptcy court was invoked in 1935 (R. 8, folio 6).

This decision by the Appellate Court of Illinois that the **right of redemption by special agreement** existed came about in this manner. The farmer debtors applied to the bankruptcy court on October 9, 1935 (R. 19, folio 18), for leave to continue their efforts to seek composition or extension with their creditors. In their application they set up their **right of redemption by special agreement**

with the mortgagor. (They also averred that the mortgagor, as holder of the certificate of purchase had taken a deed while proceedings under Section 75 (a) to (r) were pending. This deed was void. *Kalb* v. *Feuerstein*, 308 U. S. 433.) The bankruptcy court granted the petition and re-referred the case to the conciliation commissioner for further attempts at composition or extension (R. 22, folio 21; R. 22, folio 22; R. 23, folio 23; R. 24, folio 24; R. 25, folio 26).

Prior to this application to the bankruptcy court setting their **right of redemption by special agreement,** they had brought their suit in the state court to have this right established as is shown by the report of the conciliation commissioner on September 28, 1935, at R. 18, folio 16, where he said, "Case pending here in our local court to determine the right of debtors to redeem from W. S. Logan, creditor." This "local court" case was the one, cited in the second foregoing paragraph, which by appeal finally decided, in *Wright* v. *Logan*, 288 Ill. App. 481, that the **right of redemption by special agreement** still existed in 1937.

This **right of redemption by special agreement** was consistently recognized by the bankruptcy court which never questioned it. As late as March 11, 1939, which was more than six years after the foreclosure sale, the bankruptcy court said, at R. 39, top of page:

> "The deed held by the mortgagees has been retained in their possession under order of this court directing that it shall not be recorded or given any effect until and unless this court shall so direct." . . . "But in case this court found it necessary to order a sale, there would be a period of redemption of ninety days" . . . "The jurisdiction of this court over the deed held by petitioners [meaning the mortgage holders] and over petitioners be and the same is hereby retained; that the debtors remain in possession and custody of the property," . . . "This matter will be continued for a period of 120 days from this date. During that time debtors shall have every opportunity to redeem from the mortgage sale" . . .

Petitioners' Statutory Period of Redemption.

Apart from the petitioners' **right of redemption by special agreement,** which was fully recognized by the bankruptcy court at all times, the statutory redemption provisions related to this case as follows. Before the mortgagee Logan who held the foreclosure certificate of purchase became entitled to a deed, the petitioners, on May 3, 1934, filed their debtors' petition for composition or extension under Section 74 of the Bankruptcy Act. Thereupon the bankruptcy court issued a restraining order against all creditors (R. 7, folio 4). Later, on April 5, 1935, the bankruptcy court granted the petitioners leave to file as farmer debtors for agricultural composition or extension under Section 75 (a) to (r) (R. 7, folio 5). They accordingly filed their farmer debtor petition on the same date (R. 8, folio 6). By invoking Section 75 (a) to (r), subsections (n) and (o) thereof immediately became automatically operative to stay all proceedings in all other courts. *Kalb* v. *Feuerstein*, 308 U. S. 433. Thereafter, the bankruptcy court dissolved the restraining order under Section 74 (R. 7, folio 4). The order dissolving this section 74 restraining order is at R. 17, folio 14. No authority was ever sought or granted to lift the effect of Section 75 (n) and (o). Yet the foreclosure deed was delivered on June 27, 1935 (Respondents' brief in opposition, page 16, first full paragraph, second sentence). This deed, delivered while Section 75 (n) and (o) was operative, was therefore wholly void, regardless of the **right of redemption by special agreement.** *Kalb* v. *Feuerstein*, 308 U. S. 433.

Thus it is that there is no merit in the repeated statements in respondents' brief that the period of redemption had expired.

We now proceed to reply to the Respondents' "Argument" which begins at page 10 of their brief.

I.

ARGUMENT I OF RESPONDENTS.

That This Case Is Not One of Gravity or Importance.

(Page 10 of Respondents' Brief.)

If the construction and administration of Section 75 long prevailing in the Seventh Circuit, and of which this case merely exemplifies, are to prevail, the effect throughout the entire jurisdiction of the United States will be disastrous and virtually repeal Section 75 (s). Elsewhere the right of a farmer debtor to file his amended petition when the proceeding under Section 75 (a) to (r) for composition or extension is completed, and to have administration as prescribed under Section 75 (s), is recognized as guaranteed by the decision in *John Hancock* v. *Bartels*, 308 U. S. 180, in *Borchard* v. *California*, 310 U. S. 311, and in *Wright* v. *Union Central*, 311 U. S. 273.

There has grown up in the Seventh Circuit the judicial interpretation that all the farmer debtor is entitled to under Section 75 is the "equivalent" of the provisions of Section 75 (s). We will give four instances of this judicial legislation:

First example: *In re Price*, 99 F. 2d 691 (C. C. A. 7). The farmer debtor petition under Section 75 (a) to (r) for composition or extension was filed September 1, 1936, and the court made the rental and stay period of three years under Section 75 (s) to run from September 1, 1936, not from the date of the stay and rental order as Section 75 (s) (2) requires, and as stated by this court in the first paragraph of its decision in *Wright* v. *Union Central*, 311 U. S. 273.

Second example: Again in *In re Pate*, 99 F. 2d 694 (C. C. A. 7), where the farmer debtor petition under Section 75 (a) to (r) for composition or extension was filed March 15, 1935, the rental and stay order was made to run from that date instead of from the date of the order on June 25, 1937.

Third example: Again in *In re Monjon*, 11 F. 2d 535 (C. C. A. 7), decided about a year ago, the Seventh Circuit held that although the farmer debtor "has not had the advantage of the procedure prescribed by Section 75 (s)" and was entitled to file under it, yet "in view of the fact that appellant has already retained possession for over three years" the farmer debtor was denied the three year stay and the district court was directed to order an immediate sale.

Fourth example: So in this pending application for certiorari, the District Court at R. 45, folio 73, held that the farmer debtors have "engaged a moratorium far in excess of that provided" and has "been treated as being within" . . . "section 75 S." The Circuit Court, in affirming the District Court, adhered to its "equivalent" theory, saying in the last paragraph of its opinion at R. 71: "We conclude that appellants, who have heretofore had all the benefits to which they could possibly have been entitled under the provisions of Section 75 (s) without filing formal application for such benefits, are not now entitled to obtain a repetition of those same benefits by filing their petition for adjudication in bankruptcy" [under Section 75 (s)].

In the same paragraph the Circuit Court for the Seventh Circuit adhered to its companion judicial theory of a "reasonable time." The Circuit Court for the Ninth Circuit expressly disagreed in *Cohan* v. *Elder*, 118 F. 2d 850, where it answered the argument that the court was without jurisdiction to grant relief under Section 75 (s)

because the amended petition was not filed "within a reasonable time" by saying "The statute (Section 75) says nothing about a reasonable time. The act is to be construed liberally to accord the debtor the full measure of the relief afforded by Congress." The opinion then cited *Wright* v. *Union Central*, 304 U. S. 502, and said further that some time may elapse before the need for Section 75 (s) develops.

The importance of this case to the petitioners is not the measure of the judicial importance of the issue raised here. There are several millions of farm mortgages within the jurisdiction of this court. Liquidation has considerably reduced their number since Section 75 was enacted, chiefly because Section 75 has been successfully evaded upon one legal theory or another and farm debts were not adequately protected as the Congress intended. Farmer debtors ordinarily are unable to seek review of unfavorable decisions and scores of decisions which later were held to be unlawful thus became nevertheless the "law of the case." Laymen farmers can not understand this. Thousands of farm titles were lost before Section 75 (s) (Act of August 28, 1935) was held constitutional in 1937, in *Wright* v. *Vinton*, 300 U. S. 440. Many more were lost in states having statutory periods of redemption before *Wright* v. *Union Central*, 304 U. S. 502, held in 1938 that Section 75 (n) is supreme. Many more were lost on the grounds of "lack of good faith" and "inability to rehabilitate" (judicially held to be impliedly incorporated in the Act of March 3, 1933, and in the Act of August 28, 1935) before the 1938 decision in *John Hancock* v. *Bartels*, 308 U. S. 180. State courts in many cases sold farms out of Section 75 (Act of March 3, 1933) before *Kalb* v. *Feuerstein*, 308 U. S. 433, stopped them in 1940. Many more were lost along the way on the "reasonable time" and "equivalent" theories until *Borchard* v. *California*, 310 U. S. 311, was decided in 1940. Rights of redemption under Section 75 (s) (3) (Act of August

28, 1935) were lost before the decision in *Wright* v. *Union Central*, 311 U. S. 373, in 1940.

Except for the theory that the definition of a "farmer" in Section 75 was superceded by the Chandler Act, which was rejected in *Benitez* v. *Bank*, 313 U. S. 270, this summer, the last refuge for mortgage holders who would destroy the effect of Section 75 would seem to be these "equivalent" and "reasonable time" theories. Notwithstanding this court's eleven unanimous decisions that Section 75 must be administered according to the "mandate of the statute" and its "definite course of procedure" the persistent fault-finding mortgage holders have so far succeeded in thwarting the law. It should be frankly stated that this sorry state of affairs is not primarily due to the fault of the courts but to the misfortune of individual farmer debtors who are unable to secure legal services for the defense of their law. On the other side, the extensive legal staffs of large corporate mortgage holders having mortgages all over the country have been able to secure favorable decisions in one court or another. They have never been able to be so successful where mortgages come within the moratorium statutes relating to corporations (Section 77B), railroads (Section 77), or to municipalities (Section 81 *et seq.*). When confronted with those laws they submit to the evident purposes embodied in the legislation of the Congress made pursuant to the bankruptcy power of the Constitution.

Nor is the importance of Section 75 to be measured by the number of cases filed under it. For every farmer who invokes it, there are hundreds of others who need not file if it is effective. Mortgage holders respect or disregard it in the measure of its effectiveness.

II.

ARGUMENT II OF RESPONDENTS.

That the Bankruptcy Court Had No Jurisdiction Because the Debtors Had No Right of Redemption.

(Pages 11 to 16 of Respondents' Brief.)

This subject has been discussed at pages 2 to 3 of this brief under the heading "Reply to Respondents' 'Statement of the Case'", and will not be reverted to here.

Some unwarranted reliance upon cited cases should be mentioned however:

Buttars v. *Utah*, 116 F. 2d 622 (C. C. A. 10) (Pages 11 and 12 of Respondents' brief). (1) The opinion recognized that a former order of October 9 was invalid in fixing an arbitrary sixty day redemption period but held that since there was no appeal it became the "law of the case." (2) The holding that the force of Section 75 (n) and (o) is spent in the interim between Section 75 (a) to (r) and Section 75 (s) and therefore foreclosure may then be accomplished is in conflict with the decisions of other jurisdictions. For example *Schriever* v. *Oxford*, 116 F. 2d 684 (C. C. A. 6), decided six months later, held that by authority of *John Hancock* v. *Bartels*, 308 U. S. 180, Section 75 (n) and (o) must be interpreted so to preserve the opportunity to administer the procedure under Section 75 (s).

It should also be especially noted that *Buttars* v. *Utah* misquotes Section 75 (n). According to that opinion (in the second from the last paragraph) Section 75 (n) extends the right of redemption necessary "for the purposes of carrying out the provisions of the **act** that is to afford the debtor an opportunity to work out a composition or

extension of his debts" under Section 75 (a) to (r). The statute does not confine Section 75 (n) to the Act but to the entire Section 75. It says that Section 75 (n) shall be extended "for the period necessary for the purpose of carrying out the provisions of this **Section**" which includes Section 75 (s). The exclusive jurisdiction of the bankruptcy court under Section 75 (n) is unlimited for all the purposes of Section 75 (that is Section 75 (a) to (r) and Section 75 (s)) not merely for a part of it.

In re Cresap, 99 F. 2d 772 (C. C. A. 7) (page 12 of respondents' brief). The Seventh Circuit held (1) that the petitioner had never been a farmer but was a railroad man and never lived on a farm. This settled the matter. But the decision went further and held (2) that he had "no hope of rehabilitation." The District Court had dismissed the case under authority of the Seventh Circuit's *Lowmon* and *Wright* v. *Union Central* decisions which held that the statutory right of redemption was not affected by Section 75. When these decisions were overruled by this court in *Wright* v. *Union Central*, 304 U. S. 502, the Circuit Court reverted to the "farmer" and "rehabilitation" questions which had not theretofore entered the case. Later this court overruled the "rehabilitation" theory in *John Hancock* v. *Bartels*, 308 U. S. 180. The Cresap decision is now repudiated except for the holding that the petitioner was not and never was a "farmer."

Bernards v. *Johnson*, 103 F. 2d 567 (C. C. A. 9) (page 12 of respondents' brief), is now pending in this court. All proceedings in controversy occurred under Section 75 (s) (the original Act of June 28, 1934, or the present Act of August 28, 1935). There was no **right of redemption by special agreement** as in this case but the statutory right of redemption expired normally, except as tolled by Section 75. "Good faith" and "rehabilitation" were issues there but not here.

As to *Schreiner* v. *Farmers*, 91 F. 2d 606 (C. C. A. 3), the case arose in Pennsylvania where there is no right of redemption and title passes immediately upon sale in foreclosure even before a deed is acknowledged. The court specifically so held. The sale was held while no farmer debtor proceeding was pending.

The decision of *In re Davis*, 22 Fed. Supp. 12, is most ineptly quoted and cited by the respondents. The quotation at the foot of page 13 and the top of page 14 of their brief in opposition is neither correct nor complete. It omits the following sentence: **"This court's original thought, as expressed in In re Duffy and In re Raymond, 9 Fed. Supp. 166, can not prevail in view of the later decisions of the Circuit Court of Appeals [seventh Circuit] in the two cases mentioned."** The "original thought" of the district judge (in the *Duffy and Raymond* opinion) was exactly contrary to the opinion he was announcing in the *Davis* case. The "two cases mentioned" were (1) the *Lowmon case*, (C. C. A. 7) 79 F. 2d 887, and (2) *Wright* v. *Union Central*; (C. C. A. 7) 91 F. 2d 894, both of which were later overruled by this court, the first in *Wright* v. *Vinton*, 300 U. S. 440 (where it was specifically mentioned in the first paragraph), and the second in *Wright* v. *Union Central*, 304 U. S. 502, which reversed it.

The district judge originally held that before delivery of deed to the holder of the certificate of purchase the mortgagor still had his right of redemption under Illinois law. He, however, felt bound by the *Lowmon* and *Wright* v. *Union Central* decisions of the Seventh Circuit. This court later held with the district judge and against the Seventh Circuit, and so destroyed the district judge's decision in the *Davis* case and upheld his "original thought" in his *Duffy and Raymond* decision.

We must repeat (from pages 16 and 17 of the petitioners' brief in support of their petition herein) that *Wright*

v. *Logan*, 75 F. 2d 687, **did not** decide anything concerning an oral agreement for redemption. It held **only** that under Section 75 creditors must **consent in writing** to the debtors' proposal. This argument was also presented by the respondents (appellees there) in the appellate Court of Illinois in *Wright* v. *Logan*, 288 Ill. 481, and utterly rejected. That court found that the petitioners **had** a **right of redemption by special agreement** long after the farmer debtor jurisdiction of the federal court was invoked. This has been discussed at pages 17 and 18 of the petitioners' brief and at pages 2 and 3 of this brief.

The foregoing discussion of the *Davis* decision, 22 Fed. Supp. 12, brings us to the *Lightcap* and *Bradley* cases cited at page 15 of the respondents' brief. They are:

(1) *Lightcap* v. *Bradley*, 186 Ill. 510.

(2) *Bradley* v. *Lightcap*, 195 U. S. 1.

(3) *Bradley* v. *Lightcap*, 195 U. S. 24.

(1) It was this leading Illinois case of *Lightcap* v. *Bradley*, 186 Ill. 510, and subsequent cases, which were the basis of the district Judge Lindley's "original thought" in his *Duffy and Raymond* decision in 9 Fed. Supp. 166, which was ultimately sustained by this court in *Wright* v. *Vinton*, 300 U. S. 440, and in *Wright* v. *Union Central*, 304 U. S. 502. Thus Judge Lindley's "original thought" was reinstated as law by this court and his *Davis* opinion overruled as he thought it should be. Yet respondents assert that *Lightcap* v. *Bradley* was reversed by this court. They quickly pass on. We will stop to elucidate and show that the present authority of *Lightcap* v. *Bradley* is not tarnished. The two cases supposed to overthrow *Lightcap* v. *Bradley* are:

(2) *Bradley* v. *Lightcap*, 195 U. S. 1, and

(3) *Bradley* v. *Lightcap*, 195 U. S. 24.

As to these decisions, it need only be said that they did not reverse *Lightcap* v. *Bradley,* 186 Ill. 510, except in two respects which do not affect its authority here. (1) The then recently enacted Illinois statute as applied to the facts of that case then before this court in 1904 was held unconstitutional (1) because it was retroactive, having been enacted **after** the execution of the mortgage and (2) because the **mortgagee was in actual possession** before foreclosure and before the statute took effect. Thus it is seen that, where these two facts do not exist, *Lightcap* v. *Bradley,* 186 Ill. 510, is the law of Illinois exactly as Judge Lindley said it was in his *Duffy and Raymond* decision in 9 Fed. Supp. 166, and as sustained by this court. As (1) the Illinois statute was not enacted after the execution of the mortgage and (2) the mortgagee has never been in possession in this *Wright* case the two decisions of this court in *Bradley* v. *Lightcap* are of no moment whatever.

III.

ARGUMENT III OF RESPONDENTS.

That the Bankruptcy Court Did Not Base Its Dismissal Solely on the "Equivalent" Theory.

(Page 17 of Respondents' Brief.)

It is not true to say that "petitioners delayed five years after being ordered to file under Sub-Section S before doing so." The time element in this case very closely parallels that in *Borchard* v. *California,* 310 U. S. 311, as shown at pages 22 and 23 of petitioners' brief herein. There is but six months difference. Let us look at the record.

R. 19, folio 17, September 13, 1935. Order to file amended petition under Section 75 (s) by October 10, 1935, or be dismissed.

R. 18, folio 16, September 18, 1935. Report of conciliation commissioner stating "Case pending here in our local court to determine the right of debtors to redeem from W. S. Logan, creditor."

R. 19, folio 18, October 9, 1935, petitioners apply for leave to continue attempts to obtain composition or extension under Section 75 (a) to (r) with mortgagee Logan, setting out their **right of redemption by special agreement.**

R. 22, folio 21, October 14, 1935. Formal order approving petitioners' application to proceed further for composition or extension under Section 75 (a) to (r).

R. 22, folio 22, October 14, 1935. "And it further appearing to the court that said debtors have not had sufficient opportunity to submit a proposal of composition or extension" this order referred the case to the conciliation commissioner for "proceedings as provided under subsection (g) of Section 75 as amended."

R. 25, folio 26, November 12, 1935. Order of Re-reference because of interest of former conciliation commissioner (See R. 24, folio 24).

R. 42, entry of January 4, 1936. Petition of creditors requesting foreclosure in Edgar County be enjoined. Notice by conciliation commissioner to that court. *Wright v. Logan* (not reported) (date not shown).

Decree of Circuit Court of Edgar County, Illinois (date not given), denying **right of redemption by special agreement.**

Wright v. *Logan*, 364 Ill. 33. June 17, 1936. Appeal from the Circuit Court of Edgar County, Illinois, to the Supreme Court of Illinois. Decision of that court holding the subject matter was within the sole jurisdiction of the Appellate Court of Illinois because the sole question was the **right of redemption by special agreement**, and transferring the appeal to the Appellate Court.

Wright v. *Logan*, 288 Ill. App. 481. January 15, 1937. Decision that petitioners had the **right of redemption by special agreement.**

R. 26, folio 43, January 14, 1939. Petition to district judge by heirs of mortgagee seeking an order for

(1) A report by the conciliation commissioner;

(2) Leave to go into possession;

(3) In the alternative that the bankruptcy court find amount due on mortgage and fix time for payment by debtors and upon failure to pay the amount to order surrender of possession.

R. 36, folio 60, at page 39, folio 64, March 11, 1939. Order of bankruptcy court showing that petitioners had been paying rent in State Court. Order that jurisdiction of the court be retained; that the farmer debtors remain in possession; that they pay rental (case was under Section 75 (a) to (r) not under Section 75 (s)); that case be continued 120 days; that rehabilitation be completed in 129 days; that otherwise full force and effect would then be given to the deed (which deed was void because delivered while the case pended under Section 75 (a) to (r)).

R. 41, folio 66, January 6, 1940. Order (1) Setting matter for final hearing on January 12, 1940, and (2) that conciliation commissioner file his report.

R. 41, folio 28, January 12, 1940. Report of conciliation commissioner, showing that in addition to rent, petitioners had paid in state court (R. 37, folio 62) he held $450 as rental paid by the petitioners on the 40 acres in the Logan mortgage (R. 26, folio 43) and that debtors reported taxes paid. Also reporting all creditors paid except $38 and the Logan mortgage. Also relating continuing attempts and negotiations for the redemption of the Logan mortgage.

At R. 43 of this report, the conciliation commissioner reported the attempts at raising money to settle the Logan mortgage and recommending: "I feel that she [Mrs.

Wright] should be accorded an additional period in which to accomplish the plan which she and Mr. Pace have outlined."

R. 5, entries of March 2, 1940. "Case set for hearing, Monday, March 4th at 10 A. M."

"File amended debtors' petition in proceedings under Section 75, sub. Sec. S."

R. 5, entry of March 4, 1940. "Hearing before court in matter of possession by mortgagor and allowing debtor to amend petition for adjudication under 75 S." "Evidence heard and matter taken under advisement."

R. 6, entry of March 5, 1940. Memorandum of order which was the subject of appeal and is the subject of this petition for certiorari.

The only order to file under Section 75 (s) was that of R. 19, folio 17, which was abrogated by the bankruptcy court in its order at R. 22, folio 21. At R. 22, folio 22. At R. 23, folio 23, and at R. 25, folio 26, re-referring the farmer debtor proceedings to the conciliation commissioner for further attempts at composition or extension. It is true the petitioners asked leave to remain under Section 75 (a) to (r) for composition or extension at R. 19, folio 18, and the court granted it at R. 22, folio 22, and the conciliation commissioner, to whom the proceeding was re-referred, recommended, at R. 43, further attempts at composition or extension on January 11, 1940. He never made any other report to the bankruptcy court than this one of January 11, 1940, filed January 12, 1940, at R. 41, folio 28. Every delay was by the express authority of the judge and it was expressly approved and its continuance recommended by the conciliation commissioner of the bankruptcy court. The respondents as mortgage holders stood aside, and participated in the negotiations, until 1939, when they, evidently relying upon the peculiar "equivalent" and "reasonable" time theories

of the Seventh Circuit, applied to the district court to wreck the proceedings by ordering immediate redemption of the mortgage or surrender of possession by cutting out Section 75 (s) completely. The farmer debtors had a right to rely upon the integrity of the proceedings.

If it is to be finally held that the court may by its express orders keep jurisdiction of a farmer debtor proceeding under Section 75 (a) to (r) without final report until it concludes that the debtor has already had the "equivalent" under Section 75 (a) to (r) to those under Section 75 (s), the statute has been wrecked by judicial legislation. The intent of the Congress and the purpose of the law are thereby thwarted. No appraisal or set time for redemption as prescribed by Section 75 (s) is then ever afforded to the farmer debtor. Section 75 (s) prescribes in detail how, when, and in what sum, the farmer debtor shall redeem under it. He knows exactly how to proceed if the "orderly procedure" and "mandate" of Section 75 (s) is observed. If the "equivalent" and "reasonable time" theories prevail, he can know nothing but bewilderment. The mortgage holders had the opportunity to ask for a show cause order and the bankruptcy court could at any time have issued such an order thus precipitating the proceeding into Section 75 (s). Neither acted until 1939 when the application of the mortgagees was filed. They had no right to ask for more than that Section 75 (s) be invoked or the proceeding dismissed.

As in *Borchard* v. *California Bank*, 310 U. S. 311, instead of prosecuting the cause pursuant to statute, other procedure was resorted to. Quoting from that decision at page 318:

> **"The petitioners were entitled to compliance with the procedure required by statute. The bank [the mortgagee], at any time, could have obtained action by the conciliation commissioner and the court, in accordance with the statute. It can not now maintain that the disorderly and unauthorized procedure**

followed by the parties is the equivalent of that prescribed by the statute and that, as the petitioners have not been able to rehabilitate themselves, it is entitled to enforce its liens."

As stated above the time consumed in the Borchard case was about the same as in this instant case.

The mortgagees participated for two years in litigation to determine the right of redemption by special agreement. They stood by for two more years participating in negotiations for composition, allowing debtors to pay taxes, and rental, and to attempt to raise funds for redemption which they refused to accept. Having permitted the court, the conciliation commissioner and the debtors to proceed in good faith without objection, they are estopped to attempt to change their position by suddenly requiring surrender of possession or payment of the mortgage contrary to Section 75 (s) without appraisal to fix the amount of payment and the right of redemption before and after sale.

The situation is also somewhat similar to that in *Paradise* v. *Federal*, 118 F. 2d 215 (C. C. A. 10), decided this year, where the bankruptcy court failed to issue a formal stay order under Section 75 (s) until August 7, 1940, when it ordered a *nunc pro tunc* stay from September 8, 1938. The Tenth Circuit Court of Appeals held that the stay order was vital and could not be made retroactive.

The delays or neglect of the court may not be visited upon the head of the trusting farmer debtor, who is under the exclusive jurisdiction of the court, so as to take from him the right which is his by mandate of statute. "Reasonable time" and "equivalent" are not terms of the statute. Only the statute itself can give the farmer debtor its equivalent. It would be as consistent to say that because, after hearing, a matter remains "in the bosom of the court" for years, the right of review is thereby lost by the time a final order is entered.

IV.

ARGUMENT IV OF RESPONDENTS.

That the Petition Presents No Importaht Jurisdiction Question.

(Page 18 of Respondents' Brief.)

We must observe, anent paragraph (6) at the bottom of page 18, that there is no evidence whatever of any "voluntary offer to surrender title" except at R. 48, folio 73. Such an offer, yea, even a solemn form of contract embodied in a court order approved by the parties not to invoke the judicial process, is void as against public policy. No one may contract away his access to the courts. In a farmer debtor case where there was such a formal court order so approved by the parties, it was held to be void. *Trego* v. *Wright*, 111 F. 2d 990 (C. C. A. 6), relying upon *Guaranty* v. *Green*, 139 U. S. 137, and *Mutual* v. *Cleveland*, 82 Fed. 508.

V.

ARGUMENT V OF RESPONDENTS.

That the Decision Is Not in Conflict.

(Pages 19 to 20 of Respondents' Brief.)

As this argument is predicated solely upon the assumption that the right of redemption does not exist, we say nothing of it except that it has been discussed at pages 2 to 3 of this brief, under the respondents' "Statement of Facts," and that the decision below is squarely conflicting with all the decisions named in the brief of the petitioners' petition for certiorari at pages 5, 6 and 7.

VI.

ARGUMENT VI OF RESPONDENTS.

That a Petition under Section 75 Must Be Filed in a "Reasonable Time."

(Page 21 of Respondents' Brief.)

As we have discussed this subject at pages 12 to 19 of this brief, and the cases cited have been discussed as indicated below, we do not do so here.

For the *Price* case, see page 5.

For the *Pate* case, see page 6.

For the *Buttars* v. *Utah* case, see page 9.

CONCLUSION.

We think this case presents an urgent situation requiring the corrective attention of this court. The decisions below are contrary to the spirit of all the eleven unanimous decisions of this court and particularly to those of *John Hancock* v. *Bartels*, 308 U. S. 180; *Borchard* v. *California*, 310 U. S. 311; and *Kalb* v. *Feuerstein*, 308 U. S. 433.

The decisions below are in direct conflict with the decisions in the Seventh Circuit whose decisions are cited at page 6 of the petitioners' brief. Particularly it is in conflict with *Cohan* v. *Elder*, 118 F. 2d 850 (C. C. A. 9), to which certiorari was denied by this court, and also in conflict with those of the several district courts cited at pages 6 and 7 of petitioners' brief.

The questions involved concern many hundreds of thousands of farm mortgages.

The petitioners therefore pray that their petition for certiorari may be granted.

Respectfully submitted,

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September 13, 1941.